

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.MC.No. 463 of 2007()

CC.550/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
.....

PETITIONER:

RAMLA,
AGED 50 YEARS,
W/O. SHOUKATHALI,
THRITHALLOOR WEST,
VATANAPPILLY.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.P.ANOOP (MULAVANA)
SRI.P.RAJEEV KUMAR
SRIBEPIN PAUL

RESPONDENTS:

-
1. STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE,
PAVARATTY,
THRISSUR, THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
 2. MEHANAS, D/O. MUHAMMED UNNI,
PULICHARAM HOUSE,
MULLASSERY DESOM,
MULLASSERY VILLAGE,
CHAVAKKAD TALUK.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 463 OF 2007

Dated this the 22nd day of February, 2007

ORDER

The petitioner, along with her brother, faces allegations, inter alia, under Sec.498A and 406 of the IPC. The proceedings were initiated on the basis of a final report submitted by the police. Investigation commenced on the basis of a private complaint filed by the complainant which was referred to the police by the learned Magistrate under Sec.156(3) of the Cr.P.C. Cognizance has been taken on the basis of the final report. The 1st accused is said to be absconding. The 2nd accused contends that she had never resided with the spouses and that all the allegations are raised mala fide with vexatious intent. The 1st accused is absconding and to extract any undeserved advantages from the petitioner under the threat of criminal process, this complaint has been filed against the petitioner. It is, in these circumstances, prayed that the proceedings against the petitioner may be quashed by invoking the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C.

2. I shall scrupulously avoid any detailed discussion or expression of opinion on the disputed facts in this order. Suffice it to say that I have been taken through the averments in the complaint.

3. In every case where discharge or acquittal of the accused is a possibility – even a real possibility, it is not for this Court to invoke the powers under Sec.482 of the Cr.P.C. Ordinarily and normally the procedure prescribed by the Code will have to be followed and the accused concerned will have to claim discharge or acquittal as the case may be. The mere possibility of such discharge or acquittal cannot and will not persuade this Court to invoke the jurisdiction under Sec.482 of the Cr.P.C. This, I am satisfied, is an eminently fit case where the petitioner must claim discharge or acquittal as the case may be from the trial court.

4. The learned counsel for the petitioner submits that the petitioner does not at all deserve to stand the trauma of appearance before the criminal court and facing the ordeal. If unnecessary insistence were made on the personal appearance of the petitioner, that would work out great prejudice, hardship and loss to the petitioner. In these circumstances, the

petitioner may be permitted to appear through counsel and claim discharge. Only if she is found not entitled for discharge, her personal appearance be insisted, submits the learned counsel for the petitioner.

5. I have considered the submissions of the learned counsel for the petitioner. I find no reason, in the facts and circumstances of this case, to insist on the personal appearance of the petitioner before the question of framing charge is considered and decided. The petitioner can appear before the learned Magistrate through counsel and apply for exemption from personal appearance. I find no reason why the learned Magistrate should insist on the personal appearance of the petitioner before her plea for discharge under Sec.239/240 of the Cr.P.C. is considered on merits and appropriate decision taken. Only if the learned Magistrate finds that the charges are liable to be framed under Sec.240 of the Cr.P.C., need the personal appearance of the petitioner be insisted.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

HO

Nan/ //true copy// P.S. To Judge